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H – 206

International Court of Justice

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15 August-M-JV.

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ERRATA SHEET

Transcript of 12 August-Morning, second question on p.15498 should read as follows:-

Q You will now be shown several details concerning the plan for biological warfare and then you might recollect some things concerning the plan. I am submitting to the Tribunal, document USSR-510, which consists of the affidavit of Major General of the Medical Corps of the German Army, Walter Schreiber. I am reading it into the record.....

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OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL IN THE MATTER OF THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNION OF SOVIET SOCIALIST REPUBLICS AGAINST HERMANN WILHELM GOERING ET AL, DEFENDANTS, SITTING AT NURNBERG, GERMANY, ON 15 AUGUST 1946, 1000-1700 LORD JUSTICE LAWRENCE PRESIDING.

THE PRESIDENT: Sir David, I have one or two announcements to make. The Tribunal will sit in closed session this afternoon. There will be no open session after one o'clock today. The Tribunal will not sit in open session on Saturday.

The affidavit of the Polish priest which was offered the other day is admitted.

Request has been made to the Tribunal that the report of Col. Neave be made available to counsel for the SS. The Tribunal has requested Col. Neave to prepare for its assistance summaries of the evidence of witnesses heard before theCommission and a report grouping the testimony of the witnesses before the Commission with respect to the points on which they have given evidence. These summaries and the report mentioned are not parts of the record and are not accorded any evidential value by the Tribunal, which has before it, and will consider, the transcript of the entire evidence before the Commission. Counsel for the organizations and counsel for the Prosecution may see these documents and may comment on them in their arguments with the time heregofore allowed, but the Tribunal will not grant any dealy or any additional time for argument with regard to them.

The Tribunal has also received an application that Dr. Klafisch might make a speech on the law with reference to the organizations, and a speech in writing has been deposited with the Tribunal on behalf of Dr. Klafisch. The Tribunal does not propose to hear an additional speech on behalf of the organizations, but it will consider the speech in wirting which has been deposited by Dr. Klafisch.

I now turn to a completely different subject. The Tribunal has been informed that some of the defendants have deposited long statements for translation by the translation division.

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There is no necessity for the defendants' statements to be translated and t will not be translated by the translation division. The Tribunal draws th attention of the defendants and their counsel to the order of 23 July 1946 which was in the following terms :"In view of the full statements already made by the defendants and their counsel, the Tribunal assumes that if it is the desire of the defendants to make any further statements, it will be onl to deal with matters previously omitted. The defendants will not be permit to make further speeches or to repeat what has already been said by themsel or their counsel, but will be limited to statements of a few minutes each to cover matters not already covered by their testimony or the arguments of counsel." The Tribunal will adhere strictly to this order, and the defendants will not be allowed to make statements which last longer than, as the order says, "a few minutes." These statements will be made by the defendants from their places in the dock.

That is all.

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SIR DAVID MAXWELL-FYFE: My Lord, the affidavit of thePolish priest which your Lordship referred to, is document 4043 PS, and now becomes GB 606.

BY SIR DAVID MAXWELL-FYFE:

Q Witness, before the Tribunal adjourned, you made a comment on a note of Roehm on the document 2822 PS, which was a memo from General von Reichenau to the Supreme SA Command.

SIR DAVID MAXWELL-FYFE: My Lord, it is in document book "Y", the original document book.

BY SIR DAVID MAXWELL_FYFE:

Q Now, you see what that document is, that von Reichenau is saying -- "The desire has been transmitted to me from the Defense Policy Bureau of the Party to be also represented in the Reich Defense Counsel." He goes on to say, "I want to submit for consideration that this representation be combined in personal union with the representation of the Supreme SA Command, that possibly one suitable person be charged with both representations."

Now, look at these words which you mentioned yesterday, as suggesting that there was nothing military in the wishes of the SA. Are these the words Follow and see that I got them right. "An Krueger, nein, Mit Reichenau am --" and then the Figures -- "16 and 11, erortert als vertreter," then, "O, B, S, A, F." I will repeat that, "O, B, S, A, F, Krueger." Does that mean that the two parties of the representation are not to be combined, or agreed with Reichenau on the 16th of the 11th, that the representative of the Supreme SA-leadership is Krueger. In other words, that Krueger was to represent the SA-leadership on the Reichs Defense Counsel. Isn't that what Roehm has written?

A Krueger was the chief of the training system, and as such --

Q First of all, answer my question. Isn't that what's there, that Krueger is to be the representative of the SA-leadership on the Reich Defense Counsel?

A According to this remark, yes.

Q That was the remark that you were trying to make out yesterday, which showed that the SA were not connected with military matters. It shows they were represented directly on the Reichs Defense Counsel, doesn't it?

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A I have given the reasons yesterday for thatpurpose, this was dominantly for clearing the territory left on the Rhine for an event which I also mentioned yesterday; that is to say, the clearing out ofmen of the population, but nothing military.

SIR DAVID MAXWELL-FYFE: Now, My Lord, in the interest of time, I should ask the Tribunal's approval of the following course: I have a certain number of new documents which are of a public nature. I shall propose to put them in without referring to the witness unless there is any point that the Tribunal should like to put to him. Then when we come to documents with which the witness can help the Tribunal, I shall cross examine him on them.

My Lord, there would be some saving of time. I hope the Tribunal will approve.

THE PRESIDENT: All right.

SIR DAVID MAXWELL-FYFE: If Your Lordship pleases. If Your Lordship would look at the document book 16 B, at Page 53. The --

THE PRESIDENT: The defense counsel have these documents, have they not, or they will have them?

SIR DAVID MAXWELL-FYFE: They will be given to them as we go along.

DR. BOEHM: Mr. President, I have not got these documents.

SIR DAVID MAXWELL-FYFE: My Lord, they will be given to defense counsel as I read them.

THE PRESIDENT: Certainly, that is what I was saying.

SIR DAVID MAXWELL-FYFE: My Lord, document D-851, I didn't give the number. My Lord, that becomes GB 607. My Lord, it is a letter, it begins with a letter of Roehm's, then, the Chief of Staff of the SA, and encloses a letter from Blomberg to Hitler. My Lord, it is the enclosure that is important. That is from Berlin on the 2 of March, 1934, to the Reich Chancellor. "I feel it my duty to draw attention once more to the significance of the staff guards of the SA. According to the order of the chief of staff, every Corps and Division (Obergruppe and Gruppe) is to form an armed staff guard with a heavy machine-gun company. This formation is at present taking place. According to the report of the Sixth Military District, Headquarters, the SA Brigadefuehrers are also said to be considering forming such a staff

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guard already, and to be engaging SA men for one to one and a half year's service for this purpose. Selection and training have to take place with the aim of appearing in public. Numerically this would amount to 6 to 8 thousand SA men permanently armed with rifles and machine-guns in the area of the Sixth Military District, Headquarters, alone. A particularly awkward fact is that the creation of these staff guards relies on so-called SA auxiliary camps (Hilfswerklager), which are mostly situated in the big towns.' And I call the Tribunal's special attention to the next sentence. "Today I have received the report that in Hoechst on the Main, that is, in the neutral zone, the creation of such an armed staff guard is taking place. Such Behavior renders all the Wehrmacht's care and that of the Krueger depot within the neutral zone which are influenced by it, illusory. As the chief of staff is away from Berlin, I am sending this report direct to the Chancellor. Signed Blomberg."

Don't you realize that was two years before the occupation of the neutral zone on the Rhine? Then, My Lordship, if you will be good enough to turn over to Page 129, which is document 4013 PS, that will become GB 608. That is a letter from the defendant Rosenberg from the Local Editor's office in Berlin to the Munich Editor's Office, presumably of the Beobachter. "The Munich Editor's Office shall forward immediately in a well closed envelope the following communication to the Chief of Staff. The authorities here learned that Austrians in Berlin have informed Vienna --"and Your Lordship will note that this is third of February, 1934, during the Dolfuss Putsch which was in July, '34 -- "that the SA plans to have the Austrian formations in Bavaria march into Austria around the 8th or 9th of February. Then a military dictatorship would be proclaimed. This morning I had an inquiry from very important English quarters whether it could be possible that, behind the back of Hitler and Habicht, the Austrians in Germany could invade Austria. My informant added that so far the Austrian charges had been laid aside, but this information had come from such a reliable source that they simply had to contact us. I am afraid of a possible provocation by hired elements which, if announced to the world just at that time, could produce conflicts. I explained that the Fuehrer does not follow a peace policy with

Poland and at the same time start any military conflicts with Austria. I report this matter and if occasion requires, the supreme SA Command takes the necessary steps."

Now, My Lord, the next is the Czechoslovakian matter. If Your Lordship turns tt page 65 of the book. My Lord, that is document EG 366-1. My Lord, that is report GB 609. My Lord, it is a report on the 11th of October, 1938, dealing with the position of the Sudeten Frei Corps in September, 1933. It is made by Lt.Colonel Koechling, special delegate of the OKW to the Youth Leader of the German Reich. On the first page, Your Lordship will see, about the sixth line from the bottom, "There were an estimated 10,000 to 15,000 men in the reception camps and villages along the active front." If Your Lordship will turn to page 66, or 96, My Lordship, line two says that the groups were formed into battalions and etc.

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Then, line 6: "Supplies had been organized by the SA in conjunction with the NSV, and went smoothly from the very beginning. A very small amount of arms, consisting of Austrian carbines, had been supplied by the Austrian SA."

The, four lines further on: "With magnificent camaraderie and unselfishness, the supreme SA leadership had looked after the Freikorps materially."

Ten lines on: "Equipping and feeding remained in the care of the NSV and the SA."

Then, My Lord, on page 67, the fourth line: "Here again the SA helped in part with available signals apparatus."

Six lines from that: "The building up of the groups and staffs in the manner ordered was only possible owing to the effective support of the liaison officers provided to each group by the IKH".

Then, four lines on: "In this the liaison officers were particularly well supported by the German SA leaders from the Reich who had been put into the Freikorps battalions by the SA. Without their camaraderie and their readiness to do their duty, the Freicorps could not have carried out its task.

"The supreme leaders appointed to the Freikorps by the supreme SA leadership also contributed essentially to the building up of the Freikorps and to its successes."

And then, My Lord, on the next page there is some discussion about the way the work went on and how the SA continued to help. I think from there, if your Lordship will turn to page 71, you can see what this Freikorps did under this SA guidance.

The last paragraph, My Lord, is:

"The force carried out more than 200 minor undertakings, in which they lost nearly 100 dead and more than 50 wounded, and captured more than 2,000 prisoners and a great deal of booty of all kinds -- see Appendix 1 -- so that the task which the Fuehrer had demanded as a foundation for his foreign political negotiations may be considered as having been completed."

Now, My Lord, in Appendix 1 Your Lordship will see a list of the prisoners

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and the guns, ammunition, and equipment that were captured. Of course, the Tribunal will remember that all this happened in a time of peace, when all the defendants have been so anxious to point out to us that no war ever started -- that is, before Munich.

Your Lordship will remember that I asked the witness yesterday whether the training of the SA in the middle of the war, in 1941, differed from the training that was given in peace. I only want to give Your Lordships the different documents in which the training is found. I am not going to take them in detail, but I will indicate what they contain in a moment.

My Lord, the first is a memo on training dated the 23rd of February, 1934. That is 1849-PS, and your Lordship will find it at page 82 of the document book; that becomes GB-610. On pages 89 to 104 of the book, Your Lordship will find the training course.

Now, My Lord, the next document in order of date is 2354-PS, which is United States Exhibit 430, and is in the old SA document book. That is the organization book for 1938, which includes the training of the SA, including the military training, throwing hand grenades, and so on.

My Lord, what I proposed to do was to summarize the points of similarity at the end, and if Your Lordship will check, you can see if my summary is right.

The next document is D-925, which will become GB-611, which Your Lordships will find on page 32 of document book 16-B. My Lord, that is a list of the contents of the handbook of the SA, and it must be after 1937 because there is a reference to the people's gas mask of 1937 on page 36. I haven't got the exact date. If Your Lordships would merely like to note the sections, they are 8, 9, and 10 under the letter "E". Number 8 is musketry; 9 is training and terrain; and "E" is the training for the attack.

Then there is a lecture of Lutze, which was given in 1938, and that is document 3050-PS, which is a large bundle of extracts from the "SA Man". My Lord, this is in a special bundle from which we have had translated certain articles, and it is number K -- 3050-K. As I say, My Lord, it is a lecture

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of Lutze, of whom this witness has talked so much, given on the 14th of May, 1938.

Then, My Lord, the next is a document that Major Barrington put in yesterday. It is D-916, which is page 1 of document book 16-B. That is the training directives for 1939; it goes on from page 1 to page 21.

My Lord, apart from the training -- which is dealt with at length and which, as I say, I will summarize -- there is one point on page 21 which I would be grateful if the Tribunal would note. This is apart from training, but I don't want to go back to the document.

On page 21 Your Lordships will see, under the letter "H", "Aids to the preparation and carrying out of the training", and under number 4, "The SA Man". Just s point on that, My Lord.

The last document of this series is on page 108 of the document book 16-B, and that is 3993-PS, which will become USA 612. It is a letter from Lutze to the defendant Rosenberg, dated the 30th of January 1939:

"Please accept my thanks for your congratulations incidental to the Fuehrer's decree which assigns all pre-military and post-military training to the SA".

Nown My Lord, the common factors fo these documents are, as can be seen from the documents, as follows:

First of all, dealing with musketry, the general handling of arms, and all the concomitant factors.

Secondly, the use of terrain, including--

THE PRESIDENT: (Interposing): Sir David, the Tribunal would like you to put that last document that you have been dealing with, 3993-PS, to the witness.

SIR DAVID MAXWELL FYFFE: My Lord, I will certainly do that.

(A document was submitted to the witness.)

BY SIR DAVID MAXWELL FYFFE:

Q Witness, you have seen that document from Lutze to Rosenberg of the 30th of January 1939, have you not?

A Yes, I have got it here.

Q And is that correct, that the Fuehrer had decreed, shortly before that, that the pre-military and post-military training should be assingned to the SA?

A On the 19th of January, 1939, this was decreed by the Fuehrer, but in practice this decree was never applied.

Q I suppose you carried out the training which is contained in these directives from 1934 to 1939, did you not?

A Regarding these matters which the SA is being accused of here, I would have to speak in more detail. The privilege of justifying oneself has been stated by the American Chief Prosecutor, Mr Jackson, with particular reference to the organizations. Therefore, I shall have to come, in detail, to the accusations stated here.

Q But just a moment--

A I haven't finished yet.

THE PRESIDENT: Don't argue, please; answer the question.

BY SIR DAVID MAXWELL FYFFE:

Q Do you dispute the fact that these directives that I have mentioned all contained training in musketry. training in the handling of arms, training in the use of terrain, that is, the use of grounds, camouflage, reports, methods of attack reconnaisance, and every one except the first--no, all of them training in the use of hand grenades and generally training in attack, in battle, indealing with attac

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by armored troops, by air planes, infact that they all contained the first stages of military training which every soldier has to go through before he is qualified to be a soldier? And, witness, before you answer, you may assume that 90 percent of the male population of this court have gone through military training and they know it from a practical point of view.

Are you saying that these training directives do not contain the ordinary, initial statges of military training?

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A. First, I do not deny it, and in the second place, this is a training which is handled by the armed forces and not by the SA. Weapon training is something we never handled. These questions cannot be answered with yes or no. I would have to answer them in detail if I am to give you a truthful answer to them.

Q. Witness, what I want to know is this, and the Tribunal will no doubt let you give an explanation. Are you telling the Tribunal that these training directives were issued one after the other for five years from 1934 to 1939 and that that training was not carried into effect ? Tell me. You can answer that yes or no. Was that training carried into effect ?

A. We have carried out training in order to improve the physical condition whether we worked in accordance with these principles or not.

Q. I do not propose to put them in detail. If Dr. Boehm --

THE PRESIDENT: What the Tribunal wishes to know with reference to the document that they asked you to put to the Witness was how the Witness, explains his answer yesterday which I took down in these words,"Lutze did not write about military training." That was the answer you gave yesterday with reference to Document 3215 PS. We have a document from Lutze to the Defendant Rosenberg offering his congratulations which refers also to the Fuehrer's decree which assigns all pre and post military training to the SA. Why do you state Lutz did not write with reference to military training ?

THE WITNESS: Your Lordship, that was the question about a newspaper article regarding military training. This article in a paper dealt with what the SA was carring out. That was purely military defensive. In the Fuehrer's decree if I remember rightly, it also says the pre-military education, it may even say "training". I cannot say with certainty, but what is meant is para military, defensive military training. Later, during negotions regarding the carrying out of this decree, this conception of pre-military training or education, that is to say , everything which the Army Military Forces were doing should not be done by the SA, but they should nearly prepare everything. The body and spirit should be prepared so that once the men have gone through the school of the SA.

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They would be physically suitable to meet the tasks assigned to them by the military, and they would be spiritually prepared to do their military servic, that was the spirit of the decrees and the deepest spirt of the so-call SA. So you can see that service with arms was not planned in connection with that training.

Q. Are you saying that between the Fuehrer's decree of January and the beginning of the war that there was no pre-military training done ?

When did you start it again ?

A. It was supposed to start with the discharge of the people who were serving with the Army in 1939. That is when this decree was to become operative. Then the beginning of the war prevented its becoming operative. That was contained in an order fr Colonel General Brauchitsch. It came out in the early days of November and also in a letter from Reichsleiter Bormann address to the Chief of Staff . In that letter it was emphasized particularly .

Q. When did you say it was tocome into operation ? Did you say in Octobe When was it due to start ? When was the pre-military training due to start ?

A. 1939.

Q. When.

A. This training was to start after the beginning f war. In other word during November and October, but I do not remember that accurately. Until then preparatory military work had been carried out.

Q. Are you telling the Tribunal it did not start ?

A. I am telling the High Tribunal that the carrying out of that decree was scheduled to start in the autumn of 1939.

Q. Then why did you quote such an extraordinary untruth in your report of June, 1941, which your Lordships will find on Page 118. The pre-military training practised by the SA since the outbreak of war on a voluntary basis in the SA defense gro ps has been already explained in detail in reports 1 and 2. Those are your first reports of the war regarding the activity of the SA during the war. Then you go on to explain the report including clan target practice, instruction and practice in handling and cleaning

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rifles, as well as shooting on a range in a field, and further, the throwing of hand grenades under assumed combat conditions. How did you put such an enormous untruth in your report if what you are telling the Tribunal is the truth today that you never started it at all ?

A. Neither did I tell the untruth in that report nor did I tell it now. I might say that report refers to a time of war. I think it does. Have I understood you correctly, does it refer to war time ? With the beginning of the war, the SA had done everything to increase Germany's armed forces . That was our duty. Much importance was attached to military physical training, that is to say, no longer to ordinary physical training, but military training designed for military ways: even that did not include weapon training. If the cleaning of rifles is mentioned, it means we demonstrated to out men with out small caliber weapons.

Q. The report includes radio training. The pre-military training include men over 18 years of age. Your Lordship has the documents to consider. My Lord, the next group of documents which I have asked your Lordship to consider relate to

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the fact that it was stated before the Commission that the "SA Mann", which is a part of the evidence of the prosecution was an unofficial publication with a circulation of 200,000. That was said before the Commission at pages 212 and 213. If your Lordship will be good enough to look first at page 111 of Document Book 16 B, you will find Document Number 4010 PS which will be GB 613. It is page 117 of the German Book.

THE PRESIDENT: 111 of our book?

SIR DAVID MAXWELL FYFE: My Lord, it is page 111 of your book. That is a letter from the editor of "SA Mann" to the defendant Rosenberg. It asks him for an article to commemorate their five years of independent publication and 8 years of publication as a supplement to the "Volkischer Beobachter". In the middle of the second paragraph, your Lordship, you will find the sentence, "A subscriber's list of half a million clearly shows the importance of the 'SA Mann', whose educational influence has by far gone beyond the ranks of the SA." That was on the 13th of August, 1936. "In a few weeks, 'Der SA Mann' combat publication and official organ of Supreme SA-Leadership, will look back upon an existence of respectively 8 and 5 years."

Then, my Lord, on page 116, of the German Document Book you will find a letter from the Defendant Rosenberg's staff. "Reichsleiter Rosenberg confirmed, with his best thanks, receipt of your letter of August 13th a. c., and sends you inclosed the preface asked for."

If your Lordship will turn back another page to 109, which is page 115 of the German Document Book, there is a letter from the Editor again to the Defendant Rosenberg. Your Lordship will see on the letterhead this time "The Pressereferent of the Supremecommand of the SA and Main Office of the Editor of the "Der SA Mann". This my Lord, is April 21, 1938. It is now ten years. There again they are asking Defendant Rosenberg for an arti on the subject "Ideology and Combatpaper" ("Weltanschauung und Kempfblatt") or something similar to it.

In the next paragraph they say, "I do hope, that you will be agreeable to our wish and I am convinced that especially a contribution from your pen will be greeted with particular enthusiasm by our 750,000 subscribers."

Your Lordship will remember the evidence that this witness gave that a few months after 1939, the total membership of the SA was 1,500,000, so "Der SA-Mann" went to one in every two.

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My Lord, I have already referred the Tribunal to the recommendation of the Chief of Staff Lutze in the training directive, D 918, of "The SA Man" and my Lord, as I told your Lordship, the articles appear in document 305-PS, which is U.S. Exhibit 414. There is a long list of articles that are contained in that document of a military nature, anti-semitic nature, anti-church nature, all of which my friend Colonel Storey put to the Tribunal. I do not intend to over it again.

Now, my Lord, the next document which I had asked your Lordship to look at is one of the cases of the perversion of the course of justice in the interests of the SA. My Lord, it is document D-923, which your Lordship will find on page 22 of the document book 16B; that becomes GB 615.

My Lord, it is a long document but I will take it very quickly and if there are any points your Lordship, I will be very willing to deal in detail with it. My Lord, the German page is 22 also.

My lord, there is a report that appears on the top of page 22. There are five sections which are recapitulated in the sixth. The first is a report of the Public Prosecution Provincial Court, Nurnberg-Furth to the Bavarian State Ministry of Justice, dated 21 August, 1933, regarding the beating to death of one Pflaumer by the Sa. Then, my Lord, there is a post-mortem report. There is a report from the Public Prosecution that the police were refusing to give evidence in the above cases. "This might endanger the well-being of the Reich."

As for the report from the Court of Appeal Public Prosecutor, "The Police Directorate Nurnberg-Furth refuse permission to police officials to break official secrecy."

Number 5, rather naively states in the last sentence:

"Police Directorate refuse permission to police officials to break official secrecy for the trial. They also need both accused (that is the people who are accused of beating them to death) to guarantee the security of the party rally."

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Then, my Lord, the next document, 6, is a report from the defendant Frank to the Minister of State for the Interior and, my Lord, it shows that the man Pflaumer was beaten up at the guardhouse in August 1933, a twenty-nine year old married mechanic and he was then brought to the main police station by the SA and died there.

And, my Lord, on page 23, at the top, your Lordship will see:

"The Provisional Court doctor also reported that, according to his findings, Pflaumer was beaten to death in a most cruel and torturing way with blunt objects."

And two lines on, after dealing with the result of the bastinado:

"The conclusion had to be drawn that the perpetrators did not cause the injuries to the ill-treated man in self-defense."

And then apparently they say there is some question of doubt, which your Lordship will see on the evidence there was no doubt that those people were concerned.

Then, my Lord, the next two paragraphs deal with political pressure against proceedings and, my Lord, there then comes a somewhat similar case in Section II. I do not want to complicate the matter. It is a separate case of three Jews beaten up by the SS.

Now, my Lord, on page 24, the defendant Frank says in Section III:

"The events described under I and II give me cause for great apprehension."

He goes on to say that people are still indulging in brutality; that members of the SA -- in the middle of the next paragraph "still allow themselves to indulge in the inadmissible ill-treatment of opponents."

And then, at the beginning of the paragraph after that:

"The events show further that unfortunately attempts are still being made to interfere with the legal course of justice."

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Then the defendant draws the line of date of the amnesty. Then, at the beginning of the next paragraph he says:

"Especially in the case of Pflaumer, I consider it an urgent necessity, in the interest of safeguarding the authority of the State and the good name of justice and the police, to avoid even the slightest appearance that the police are shielding this crime."

Then he suggests -- the last words on that page --:

"The misgivings of the chief of the political department of the Nurnberg-Furth Police Directorate, can, however, be taken into consideration by the exclusion of the public during the trial. The carrying out of a trial can further hardly be prevented by the refusal to allow testimony. For, in view of the confession of the accused Horn and Stark to date, together with the results of the judicial autopsy, the trial will have to be instituted against them and carried out under any circumstances."

Now, that goes on and you will see that he has requested and the public prosecution are requesting the prime minister to bring up the matter for discussion at the next meeting of the Council of Ministers and to invite Roehm and Himmler. Then that is done and my Lord, there is then a significant inquiry on page 26 from Bormann, asking how the matter is going on and, my Lord, then on page 27, page 27 of the German version too, document 13 (it is one of the inserts on page 27):

"The Public Prosecution Provincial Court Nurnberg-Furth report to Court of Appeal Public Prosecutor, Nurnberg, that the preliminary investigation ended on 19 March, 1934. The Police Directorate, Nurnberg-Furth, intend to apply for the quashing of the criminal proceedings."

Then, my Lord, in document 14 that matter is discussed and my Lord, that is on pages 27 and 28. Then at the bottom of page 28, 28 in the German version, you will find a section "Certificate of Opinion." My Lord, that says:

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"On mature consideration, I assent to the suggestion of the Police Directorate.

"Firstly it should be considered whether the proceedings could not be brought to an end by the release of the accused from criminal proceedings. According to the result of the preliminary investigation alone, Korn ought to be accused in any case according to what is mentioned above, while only the accused Stark could be released from criminal proceedings. But therefore, an investigation or an extension of the investigation against the persons who took part in this matter (accomplices, possible instigators and helpers) and finally also those who favored the culprits would, according to -- such and such a paragraph -- be occasioned.

" But if the proceedings were to be carried out in this manner, it would be unavoidable, even if the public is excluded from the actual trial, the public would get to know about the events. But this would seriously harm and shake the reputation of the SA, the Party, the police and even the National Socialist State."

If your Lordship would look at the bottom of page 29, last paragraph --

THE PRESIDENT: Before you deal with that, perhaps you ought to read the last paragraph but one on page 27, beginning at the second sentence in that paragraph, page 27, the last paragraph.

SIR DAVID MAXWELL FYFE: My Lord, is that the one beginning, "Therefore --"?

THE PRESIDENT: Yes, the second sentence, "As the police forces --."

SIR DAVID MAXWELL FYFE: "As the police forces available were far from sufficient, the SA Sturm for special use, which was stationed in Nurnberg in the old Samaritor Wache at the Hallplatz No. 4, was appointed to assist the police in these tasks. In this guardhouse the necessary confrontations and

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questionings of arrested Communists took place. The leader of this Sturm SA Unit, was the then Sturmbannfuehrer (SA Major) Eugen Korn, 25 years old, unmarried, commercial employee in Nurnberg. His deputy--." and so on.

I am much obliged, your Lordship.

My Lord, I call your attention to page 29, page 29 of the German text.

"Lastly it may also be pointed out that this deed was committed relatively shortly after the coming into force of the amnesty decree of 2 August, 1933. If it had been committed before 26 July 1933, that is only three weeks earlier, it would have been amnestied like a number of other political excesses. As the deed did not originate in an ignoble motive but rather served the achievement of an exceedingly patriotic aim and the advance of the National Socialist State, the quashing of the proceedings, also in view of the above-mentioned relation of the time of the deed to the above-mentioned amnesty, does not seem incompatible with the orderly administration of criminal justice.

"For all these reasons it is suggested, in connection with the position of the Police Directorate, that the proceedings on account of the bodily injuries resulting in the death of the mechanic Oskar Pflaumer, as well as on account of the actions of criminal participation and acts of favoring immediately connected with this, should be quashed."

And, my Lord, in due course that is forwarded by the defendant Frank in the next document on page 30 and on the top of page 31, as Reich Governor, von Epp says:

"I hereby quash the criminal proceedings."

That is sent by the defendant Frank to the Court of Appeal Public Prosecutor.

It is interesting my Lord, and I should have referred your Lordhsip to it, in view of what we have heard about isolated acts unconnected with the SA leadership, that this man Korn was

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the Sturmbannfuehrer Korn who was on the staff of the Supreme SA leadership.

Now, my Lord, I did not intend to take the other ones as I hoped to be able to do it ove[illegible] shorter but there are two others which show this same perversion of justice and therefore, I submit, are important.

My Lord, the next is D-9[illegible], which your Lordship will find on page 51 and 52. That will be GB 616. My Lord, that is connected with the nine members of the SA who were charged with beating up the editor of the newspaper "The Lower Bavarian Peasant". My Lord, that was a Dr. Schloegl and My Lord, "The Lower Bavarian Peasant" I think was a Bavarian People's Party paper, a sort of Catholic Pa[illegible] paper. And my Lord, your Lordship will see that the proceedings are held to fall within the amnesty but, my Lord, it is interesting again to see that the declared motive and the connec[illegible]on with the leadership. My Lord, if your Lordship would look at [illegible]he second paragraph for the reason for the decision of the [illegible]ntgerichtsrat, it says:

"There is no doubt, therefore, that the deeds were committed for political reasons. They were committed also to ensure the success of the National Socialist State. It may be that the destruction of the furniture was intended to serve the purpose of a house-search, in which previously imbibed alcohol may have played a harmful part in the manner of carrying out that decision.

It may be that, by the destruction of the furniture, certainly however, by the ill-treatment, it was intended to restrain Dr. Schloegl from further political activity. No other motive for the deeds can be found."

I ask your Lordship to note:

"The Supreme SA leadership have also examined these questions In their letter of 14/9/33, they announce that the SA men in question were bound to see and did see, in the possibility of Dr. Schloegl forcing his way into the National Socialist movement, a danger for the movement and thus for the nation

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itself. Nor were the deed committed for the purpose of personal profit or other low motives. The supreme SA leadership state on this point that the deed and intention of the SA men were only aimed at the well-being of the National Socialist movement. The political reason and the purity of the intention is thus beyond doubt."

Now, my Lord, I ask your Lordship again to note that it is the supreme SA leadership.

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My Lord, the only other one -- I hope I can take it quite quickly -- your Lordship will find in Document Book 16-A, the smaller document book, page 9.

Your Lordship may remember that my learned friend, Major Barrington, mentioned the question of the punishment of these members of the SA -- I think, My Lord, they run to some 30 or so -- that had been engaged in cruelties in the concentration camp of Hohenstein. My Lord, this is the report dealing with their punishment, and your Lordship will note --and this is, in my submission, interesting -- that it is dated the 5th of June 1935. My Lord, it concerns the penal proceedings against the merchant and SA leader Obersturmbannfuehrer Jaehnichen and 22 comrades. I'm afraid I said 30; it is 23 -- for inflicting bodily injury on duty in the protective custody camp of Hohenstein in Saxony.

This is a letter from Dr. Guertner to the defendant Hess. That is, it is a top level letter from the Ministry of Justice to the Deputy of the Fuehrer. My Lord, it is 784-PS. It becomes GB-616.

Dr. Guertner first of all sets out the sentences that were asked for by the Prosecutor. Then he sets out the sentences which were inflicted by the Supreme Court in Dresden.

My Lord, I ought to say this is page 9 of the English document; I think page 9 to 15 of the German, too.

My Lord, turning over to page 10, which is pages 10 and 11 of the German document, your Lordship will see that the Minister of Justice writes:

" After the proposal of the sentence, however, still before the announcement of the verdict, the chairman of the Criminal Division Number 12" -- that is, the judge -- "received the following letter from the Reich Governor (Reichstatthalter) of Saxony."

DR. BOEHM: I beg your pardon, Mr. President, but the document which I received neither has a page 9 nor a page 10. It only has, if anything, a page 30. I am therefore not in a position to follow the prosecutor's speech.

SIR DAVID MAXWELL FYFE: My Lord, I see the paging is different on Dr. Boehm's copy. This is the letter from the Reich Governor:

"As I was informed, it is proposed to impose a punishment of 3½ years of penal servitude upon the accused Standartenfuehrer Jaehnichen. Without

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wanting to interfere in the proceedings or intending to influence you as judge in any way before the verdict is announced, I should nevertheless like to once more call your attention to the fact that the circumstances, as they had been brought about by the revolution of 1933, and as they, without doubt, were still taking effect up to the beginning of 1934, cannot be overlooked when pronouncing sentence.

"A further point appears to me to be worth taking into consideration, namely the fact that one cannot accuse Jaehnichen of having a low character and that, above all, in Hohenstein the scum of humanity had to be attended to. In consideration of this fact I should like to leave it to you to consider whether the lapses call for such a severe degree of punishment" -- your Lordships will note the next words -- "or whether a pardon could not be considered.

"As Gauleiter of the NSDAP I consider it as my duty to call attention again to the unusual circumstances."

Now, my Lord, Dr. Guertner, the Minister of Justice, goes on, and this your Lordship may well think is the most extraordinary and sinister part of it:

"Moreover, the information has come to hand that the two magistrates who functioned as judges in the principal trial, namely Regierungsamtmann Helbig and the merchant Pesler, had been expelled from the NSDAP after the announcement of the verdict. I do not know by whom this expulsion was ordered.

"Finally it has been put to the assistant prosecutor, Staatsanwalt Dr. Walther, who is a storm trooper, after the pronouncing of the verdict on his Obersturmbannfuehrer, that he should resign from the SA."

And then you may think that the Minister of Justice goes on with some extremely pertinent observations as to the impossibility of carrying on justice if this goes on. He says in the middle of that paragraph, the end of page 12 in the German version:

"That kind of procedure against lay judges after the verdict had been pronounced would naturally and necessarily arouse the feeling that when they are functioning as judges they are responsible to a certain office for their work. Hereby the judicial impartiality which is the foundation of every orderly administration of criminal law becomes null and void."

Then he deals with the lay judge, and as your Lordship will see, at the

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end of the paragraph he comes to the understandable conclusion:

"I would find myself obliged to consider the question whether in the face of such a state of affairs public prosecutors and judges could stillbe functionaries of the Party or members of the SA at all."

Now, My Lord, Your Lordship will see at the bottom of page 11 of the English book, page 3 of the document, and page 13 of the German version, that there is a letter to the Chief of Staff of the SA of the NSDAP, with a copy of the following accusation enclosed. My Lord, that would be Lutze at that time because Roehm had been murdered before that date. The same points are put to the Chief of Staff of the NSDAP, and , My Lord, the matter then goes up to Hitler. My Lord, your Lordship will find the report that contains Hitler's decision on pages 13, 14 and 15 of the English version, and pages 16 to 33 of the German version. I think it starts on page 16. I hope Dr. Boehm will be able to find it.

My Lord, that is 785-PS. I am sorry, My Lord, I thought it was the same document. It is a different document. Your Lordship will see in the first paragraph a description of the crime:

"The mistreatment of inmates which has led to the sentencing of the accused was not carried out for any political purpose (to obtain a confession, to punish disciplinary infractions, etc.) or in response to previously suffered wrongs inflicted by Communists, but was merely malicious torture or expressions of sadistic brutality."

Then:

"A few cases of mistreatment occurred, however, where enemies of the State were involved."

At the end of that paragraph:

"...the defendants not only attempted to wring confessions from the inmates, but that they had acted in sheer lust for torture."

"They acted in sheer lust for torture." This is a document coming from the Reich Chancellery, so your Lordship sees the criticism that was made in that quarter. But then, my Lord, it goes on to say at the endof the next paragraph about being motivated neither by politicalpurposes nor by personal revenge. Then that is shown.

But, My Lord, at the top of page 14 it is stated:

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"If, nevertheless, I suggest subsequently a further reduction of sentence based upon new evidence of some of the defendants, I can only justify my action because I believe that according to circumstances the defendants in one or the other case of mistreatment may have partly acted out of revolutionary motives."

I will repeat that:

".....may have partly acted out of revolutionary motives."

Then it gives some examples, and, my Lord, at the foot of the page there is the appendix, Hitler's decision:

"Upon application of the Reich Minister of Justice " -- which was the preceding -- "I hereby grant in the case against Rudolf Jaehnichen and others for mistreatment of persons committed to protective custody in Hohenstein Concentration Camp, the following mitigation of sentences as enumerated in Column 6", and then roughly, my Lord, the sentence is reduced by either a third or a half in each case.

My Lord, I would just like to correct an exhibit number. The first document is U.S. Exhibit 732, and the second document 785-PS, will be GB-617. My Lord, I am again sorry; it is my mistake. It is US-733, the second document I am so sorry.

THE PRESIDENT: Perhaps we had better break off now.

(A recess was taken.)

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SIR DAVID FYFE : I have finished with the submission od doumonts. There are three more questions in cross-examination which I should like to put to the witness; and then I shall be finished with my cross examination.

Q Witness, just before you turn away from this 16-D, if you turn to Page 87, the Tribunal would like to know from the witness what the SA Sturm for Special Use was.

SIR DAVID FYFE : Your Lordship, I mention that because I told your lordship that the fact that Korn was on the staff of the Supreme SA Leadership was on 27, the last lineof 26; and you'll see that the last line of 26 is :"Korn is at present in Munich on the staff of the Supreme SA Leadership." My Lord, then I'll ask the question.

Q Witness, will you tell the Tribunal what the SA Stur, for Special Use, which was stationed in Nurnberg in the old Samaritor Wache was; what task it carried out in assisting the police?

A We had SA Sturmers and Sturm Bunders for a special use in various places, and in Nurnberg, too. The typical special task of this Sturm was to place themselves at disposal in case catastrophes. Furthermore, for plice purposes when they were requested by the police and used by them as auxiliary police; als o in fire extinguishing service; during the war in air raid service in Hamburg, for instance, and Westphalia. Those were in general the tasks of the Sturm Bunders for special use. They were composed of men who had an opportunity and who were suited for such tasks.

Q The present example is that these men under Korn, who was on the staff of the Supreme SA Leadership, beat this Communist to death by using the bastinado on his feet. Was that on

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of the special uses which this Sturm indulged in when they were doing no work? Was that the sort of thing, beating up Communists? Was that one of the special tasks? Was that a typical special task of this Sturm, to beat up Communists in August 1933?

A. No. That was never the task and if Korn did that he had to be punished.

Q. You must have known Korn, didn't you? He was on the staff of the Supreme S.A. Leadership.

A. I know Korn from the year 1934, approximately.

Q. And you know and worked with Korn for years, didn't you?

A. He was employed in the personnel office for some time; and this offense which has just been reported I know nothing of up until today.

Q. You heard nothing about it until today, when you were deputy chief of staff of the S.A.? Are you really telling the Tribunal you know nothing about the fact that one man from the staff of the Supreme Leadership had been engaged in this foul and brutal manner in Nurnberg, and you heard nothing about it? Is that your story?

A. The prosecutor seems to have overlooked the fact that I was deputy chief of staff only from 1939 on; up till then I was section chief and then chief of the Fuehrungsamt.

Q. Not forgetting what your first words in advance were, that you said that you could give an account of the S.A. from 1933 onwards dealing with all relevant parts -- however, if that's your answer I'll leave it. I'll now take up another of your suggestions. Look at Document 1721-PS.

SIR DAVID FYFE: My Lord, that's the document that is in the original document book, My Lord, dealing with the

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events of November, 1938.

Q Now, Witness, I'm not going to argue with you; but I want you to point out certain things in the documents and then pass it to the Tribunal. You are not disputing that you wrote the document dated the 29th November, 1938, of which a copy is the first one in the bundle. That is the document dealing with the handing over of Jews' property, taken by the SS, to the Gestapo. Now, as I understood you yesterday, you are not disputing that you did write that document, of which that is a copy? Is that so?

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A I said so yesterday.

Q Would you look at the bottom corner of that document, and you will find on it the stamp of the SA Group Kurplatz. Do you see that?

A Yes.

Q And do you see in the stamp the letters "Y", "y" and "G"?

A It is something like that, yes.

Q Now, at the bottom, beside the stamp, you will see "Z D A", which is -- don't let's waste time -- "Zu den Akten" -- "Put it in the File". Do you see the contraction, "ZDA"?

A Yes, I see it.

Q Now, would you look at the document which you are saying is not authentic, and you will find on that the same stamp of the SA Group Kurplatz, and the same letters, "Y", "y", and "G". Do you see that?

A Yes.

Q And do you see -- I think it is on the top of the second document -- that is the document of the 11th -- the contraction "ZDA" in the same handwriting as on the first document? Do you see that, at the topof the document, "ZDA"?

A Yes, I see it.

Q Now, just two other points I want you to see on that document, which is the report to the SA Group Electoral Palatinate, Kurplatz, dealing with a number of Standarten. Would you look under "Standarte 145"? Now, do you see that it says "Synagogue at Densheim, Synagogue at Lorsch, Synagogue at Hoppenheim, Synagogue at Birkenau". Look at thenext. Do you see that the next is the "Prayer House at Alsbach-Gebetshaus in Alsbach", is it not?

A Which page, if I may ask?

Q It is in the list. It is the document of 11 Novembe

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and it is a list. It gives a series of Standarten, and the first is 115, and the next is 145. Do you see that?

A Yes.

Q Do you see that after four synagogues, the next one -- I think it is Gebetshaus in Alsbach. Do you see that?

A Yes.

Q Now, I want you to turn over the page to the note for the files of the telephone call by the Fuehrer of Brigade 50, Darmstadt, Brigadefuehrer Lucke. Do you see that?

A Yes.

Q Now, as you will look down to the same group, you will see that it says, "The Synagogue in Bensheim destroyed by fire. The Synagogue in Lorsch near Bensheim destroyed by fire. The Synagogue in Hepponheim blown up. The Synagogue in Rimbach and Birkenau destroyed." Now, does it say the "Prayer Hall" -- the word is "Die Bethalle in Alsbach" -- destroyed?

A Yes.

Q The same distinction is drawn between the synagogue and a prayer hall, which is either called a "Gebetshaus" or a "Bethalle". Now the other pages contain reports of different Standarten.

My Lord, I am not going to argue the point, but I wanted to bring out these points from the witness, as he had challenged the document.

Now, witness, I want you just to help me on another point. You know that after these incidents of 9 and 10 November 1938, fourteen SA men were found guilty of killing Jews? Did you know that? Men of various ranks in the SA were found guilty of killing Jews? Do you accept that? The document is before the Tribunal of the Party Court, containing the decision. I do not want to waste time is you will admit one thing I put to you. Do you admit that fourteen SA men were found guilty by the Party Court after 9 and 10 November of killing Jews?

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A. I learned of this document here when I was a prisoner -- that the fourteen SA men are mentioned who are supposed to have shot Jews or had Jews killed.

Q. Now, you have said not once but many times that whenever SA men were guilty of excesses, they were punished. Do you know that all the SA men who had killed Jews were left off, that the only SA men who were sent for punishment were those who had committed rape or theft, three of them who had committed rape and theft? Do you know that all these fourteen SA officers were let off for this murder?

A. I am convinced that they were punished by the SA. The punishment for the murder which is mentioned here was a matter for the regular courts. I could not know whether they were punished there.

Q. Let me tell you, because the document has been put before the Tribunal. The regular court let them off because they fell "within the line of Party comrades who, motivated by the decent National Socialist attitude and initiative, had overshot the mark." That is why the Party Court let them off, according to their own document. Now, are you saying that the Party or the SA punished people for ill-treating Jews when these 14 murderers of Jewish women and children and men were let off because they were "motivated by the decent National Socialist spirit?" Are you saying that they were punished?

A. Please show me this document. I consider it impossible that the Supreme SA leadership took this attitude.

Q. It is the Supreme Court of the Party, the Supreme Court of the Party, composed of Gauleiters.

A. The Supreme party Court is not the SA Court.

Q. No, but it is the Supreme Court of National Socialism, and that is what they did -- they recommended that these fourteen SA murderers should be let off. How did that square with your suggestion that murder was frowned upon?

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A Please understand that the Supreme Party Court was a Reich institution of the Party and the SA had its own SA Court. The SA leadership and the Chief of Staff as the Supreme SA Court h had influence only on the SA Court, not on the Supreme Party Court.

Q Did you know, witness, that the Supreme Party Court had let off these fourteen murderers in the SA after 1938?

A I learned of that only here when I was a prisoner from this document.

Q So the Deputy Chief of Staff didnot know that fourteen officers of his own organization had committed cruel and bloody murders? That is what you tell this Tribunal?

I will ask you on another point.

A The Deputy of the Chief of Staff was convinced and is still convinced today that all excesses of the 8, 9 and 10 November, so far as they were committed by SA members and so far as they became known, were punished, not only by the SA but by the regular courts. I know from the words of Chief of Staff Lutze that he insisted on that. I will not deny that one or another offence did not become known to him.

Q Now, there is one other point I want to put to you. You have represented Chief of Staf f Roehm as being a peace loving, church-going man. Is that the impression you want this Tribunal to have of the character of Chief of Staff Roehm -- that he was a peace-loving, church-going man?

A That is a question the meaning of which is hard to understand. I said that Chief of Staff Roehm belonged to the church. He was not opposed to the church. He was peaceful. It has been shown, and I myself as a witness, that he told not only the SA Fuehrers but also representatives of foreign powers

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repeatedly -- that he emphasized the friendly relations which he endeavored to bring about.

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Q I just want you to look at an extract of Hitler's speech on the 13th of July, 1934, a fortnight after the Putsch.

SIR DAVID MAXWELL FYFE: My Lord, I passed on to the witness an extract for 1934. I put in an extract from the Times.

BY SIR DAVID MAXWELL FYFE:

Q At Page 182, this is what Hitler stated to the Reichstag: "At this point I must establish the fact for the present and for posterity that these men no longer posess any right to invoke National Socialism as an ideology." This is Roehm and his friends. "Their lives have become as bad as those of the people we overcame and repressed in 1933. The behavior of these men made it impossible for me to invite them to my house or to enter the Chief of Staff's house in Berlin even once. What would have become of Germany had these people been victorious it is difficult to imagine." Now, witness, you know perfectly well, and I ask you to tell the Tribunal, why was it that Hitler wouldn't enter Roehm's house even once ?

A That was up to Hitler. I cannot judge that; I can not give you any information.

Q You know perfectly well that he was the most notorious homosexualist in Germany, isn't that right ?

A It is not unknown to me that he was said to be, but that that was Hitler's reason, I do not know.

SIR DAVID MAXWELL FYFE: My Lord, I am sorry, there is one duty that I had forgotten. Your Lordship asked me to put the affidavit of Dr. Hoegner to this witness. He was the Prime Minister of Bavaria. If your Lordship remembers, Dr. Boehm referred to it and your Lordship suggested that I should put it in cross examination. I think the Tribunal have copies, My Lord. That is document D-930, GB-617.

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THE PRESIDENT: Sir David, I don't remember saying you should put it to him. I think what I said was that if you did put it to him that Dr. Boehm then would have an opportunity in re-examination of him upon it, and if you did not put it in evidence, it already being in evidence, it would be in evidence.

SIR DAVID MAXWELL FYFE: My Lord, I have no desire to put it. I thought Your Lordship wanted me to do it. This is one of the group of affidavits which I mentioned to the Tribunal that I would give to the defense counsel at once, as they are general affidavits from ministers and other prominent people in Germany which are in general rebuttal of the affidavits put in by the defense, and My Lord, I was quite content--in fact I suggested and the Tribunal approved--that they should be read when we are dealing with the documents after the defense documents, but that I should give it to the defense so that they would have an opportunity in advance of seeing them. My Lord, that is my position, and I am very content to adhere to it.

THE PRESIDENT: If you want to make use of it, I think perhaps it should be offered in evidence so as to make it strictly in evidence.

SIR DAVID MAXWELL FYFE: Well, My Lord, I am quite able to do that. They were going to be offered in evidence as affidavits. My Lord, it is only a matter of procedure; I don't mind which-- of course the Tribunal will decide that. The defense are putting in about 3,000,000 affidavits which are being summarized in a number of general affidavits. My Lord, I suggested the other day that we should put in--at the same time we should put in rebuttal these few affidavits that we have.

THE PRESIDENT: Well, do it then. Offer it in evidence now.

SIR DAVID MAXWELL FYFE: Well, My Lord, I will do that.

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THE PRESIDENT: Is there any other rebuttal besides these affidavits ?

SIR DAVID MAXWELL FYFE: My Lord, it is this group-- I think there is one addition to it, My Lord, but that is all the rebuttal as far as I know.

THE PRESIDENT: Yes, you are not going to apply to call any additional witnesses ?

SIR DAVID MAXWELL FYFE: No, My Lord. I will not try to say for my colleagues, but as far as I know, I haven't. I will verify that at once, My Lord.

My Lord, none of the prosecution are going to submit any oral evidence in rebuttal.

THE PRESIDENT: Very well.

SIR DAVID MAXWELL FYFE: My Lord, this is the affidavit of Dr. Wilhelm Hoegner, the Bavarian Prime Minister, and it gives his address. In the second paragraph he mentions: "The two pamphlets, Part I and Part II, submitted to me-- 'Hitler and Kahr, the Bavarian would-be Napoleons of 1923, a scandal of justice, exposed in the committee of inquiry of the Bavarian Provincial Diet', were written by me. At that time I was assistant reporter of the committee of inquiry of the Bavarian Provincial Diet on the Hitler Putsch of 1923. All the facts mentioned in these pamphlets originate from court documents through which I worked personally and from which I made extracts. That also applies especially to the military orders and instructions, partly quoted literally in the pamphlets."

And then, My Lord, he gives an account of the illegal and violent activities of the SA from 1921 to 1933, and, My Lord, that is the long paragraph. Then he goes on to say, dealing with 1933 and 1934: "The SA did not change their behavior later on either. Especially after 1930 it distinguished itself in the conflicts with its political opponents by its violence and ruthlessness. After the coming

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into power of the National Socialists, the SA broke into the houses of political opponents as heavily armed hordes, ill-treated and arrested them. It is known to me that the SA also played an evil part in the persecutions of the Jews in April 1933. The same was the case in the occupation of the Trades Union buildings on the 2nd of May, 1933. Already before that, the chairman of the Munich Trades Unions, Gustav Schiefer, had actually been attacked by members of the SA in the Trades Union building, and so seriously ill-treated that he had to spend a long time in the hospital."

Then, My Lord, that is continued with some additional information about the SS in the next paragraph. And then in the pre-penultimate paragraph, it says: "Before my departure from Germany the former Communist Diet Deputies Dressel and Schlaffer were murdered in the concentration camp of Dachau, probably in May, 1933. Whether by the SS or the SA, I do not remember for certain. I knew the incident very well because I complained about it to the Reich Minister of Justice, Dr. Guertner, in Berlin?

And then he accounts an SS incident of murdering somebody else. Then he says: "The gross excesses of the SA and SS in the service of the NSDAP were accomplished so publicly that the whole population knew about such excesses."

THE PRESIDENT: Does he say when he left Germany?

SIR DAVID MAXWELL FYFE: My Lord, I don't think he does.

THE PRESIDENT: It is rather material, isn't it ?

SIR DAVID MAXWELL FYFE: My Lord, I will get that point discovered. Your Lordship is of course right, we ought to have had that stated as to when he did leave Germany.

THE PRESIDENT: Perhaps one ought to conclude from the document that it only relates to 1933.

SIR DAVID MAXWELL FYFE: Well My Lord, he does say; "After the coming into power of the National Socialists, the SA ....." did so and so. That is after the beginning and he goes up to May, 1933, to the Trade Unions. But Your Lordship

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is quite right. There is no specific date given after 1933. I will verify that point, My Lord. Much obliged, My Lord.

THE PRESIDENT: Dr. Boehm, hadn't you better wait for your re-examination until after Dr. Seidl has asked questions, if he wants to ask them?

DR. BOEHM: Certainly, but I should like to make one suggestion. The declaration of Dr. Hoegner was submitted at my suggestion, as I gathered, and I now ask that the statement of the State prosecutor and the Court in Braunschweig and the declaration of Dr. Schumacher and the declaration of the Mayor of the provincial capitol of Braunschweig should also be submitted. These are affidavits which were given to me with the affidavit of Dr. Hoegner.

THE PRESIDENT: You ask that we should consider the other seven affidavits which were given to you at the same time ?

DR. BOEHM: Yes, certainly. I have learned now that the affidavit of Dr. Hoegner was introduced because I referred to it yesterday. Now these other affidavits form evidence in favor of the organization. They were placed at my disposal or given to me at the same time and I would ask the prosecutor to submit the affidavits which have just been mentioned or to introduce them into the trial so that I may have an opportunity, in the course of evidence, to have the witness comment on the contents of these affidavits.

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SIR DAVID MAXWELL FYFE: My Lord, I have no objection, of course, t Dr. Boehm's putting away of the documents. We have given, I think, all, whether we have decided to use them or not. Some are not in the form of a sworn statement, and we were not going to use them. If Dr. Boehm thinks that he can get any help from any document to be had from the Prosecution, the Prosecution, of course, make no objection to his using it.

DR. BOEHM: Mr. President --

THE PRESIDENT: Dr. Boehm, you can offer these affidavits or other documents in evidence, if you want to.

DR. BOEHM: Very well. I am in a position to refer to the affidavits in the course ofthe taking of evidence.

THE PRESIDENT: Yes. But for the purpose of the record, you must offer them in evidence, and they will be given, or you will give them, proper exhibit numbers.

DR. BOEHM: Very well.

DR. SEIDL (Counsel for the defendants Hans Frank and Rudolf Hess): Mr. President, yesterday the Prosecution submitted a new document, GB-602, a letter from the commander of the Security Police, General Warlimont, to the defendant Dr. Frank.

THE PRESIDENT: What is the other reference to it? You said GB-60 It must have some other reference.

DR. SEIDL: D-970. It is a letter from the com ander of the Security Police in the Government General to the defendant Dr. Frank of the 26th of September 1944. The document also says that it is an annex, and I make the application that I may be permitted to submit an excerpt from the diary of Dr. Frank, which belongs to this document.

THEPRESIDENT: If it refers to this document, yes.

DR. SEIDL: This is an entry of Tuesday, the 26th of September, 194!.

"Conference with the State Secretary Buehler. In this conference the murder of the Prior at Czerna was discussed. The Commander of the Security Police in the Government General reported on this incident."

This is the report of the prosecution:

"In the opinion of the Governor General, this report was not suitabl and the Police Office at Kattowitz wanted to take the responsibility and lay

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down the condition that in the future not SA men but Police officials would carry out such undertakings. The Governor General told the first public prosecutor Roter to carry out a detailed investigation of that case."

The diary does not show what happened to these SA men. Therefore, I have taken an affidavit of the Defendant Frank which I ask to be permitted to submit in evidence here. It is very brief. It indicates that the people were tried and received severe punishment.

THE PRESIDENT: Are you offering the affidavit in evidence?

DR. SEIDL: I should like to offer this as Frank Exhibit 25.

THE PRESIDENT: Have you any other documents that you want to offer in evidence?

DR. SEIDL: This is the only new document that I want to offer in evidence.

THE PRESIDENT: Very well, then. I think we may as well put it in now, and you will put it in as Frank Exhibit 25. And you did not give us --

DR. SEIDL: Frank No. 25.

THE PRESIDENT: Did you give us the reference to the diary of Frank, the passage that you read?

DR. SEIDL: It is an entry of the 26th of September, 1944.

THE PRESIDENT: Is that already in evidence? I know some parts of the diary are. But is that in evidence?

DR. SEIDL: It is a part of the document GB-602.

THE PRESIDENT: Will you state that again? What was the number of the document?

DR. SEIDL: GB-602.

THE PRESIDENT: That is not Frank's diary, is it? GB-602?

DR. SEIDL: No; but the letter submitted by the prosecution by the Commander of the Security Police.

THE PRESIDENT: I know that. I was asking the number, if it has an exhibit number, of the diary of Frank of the 26th of September, 1944.

DR. SEIDL: This has the number 10. The whole diary was submitted in evidence under this number.

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MR. DODD: Mr. President, I do not wish to object to the submissio of this affidavit; but I should like to observe that if other affidavits are offered by the defendants, it may be necessary for theprosecution to have th right to cross-examine in this case. But it might very well call for cross examination if they are now going to make an effort to put in further testimony on their own behalf under the disguise of an affidavit.

DR. SEIDL: Mr. President, my intention was to recall the defendan Frank to the witness stand and examine him on this question. If I submit an affidavit, this is done only to save time, and for nn other reason. I would have preferred it the other way.

MR. DODD: I am not altogether sure, Mr. President, that this is done in the interests of saving time. I have some feeling it may be done in the interests of prolonging the time.

THE PRESIDENT: We do not need to hear any more, Dr. Seidl. We have admitted the document.

DR. SEIDL: I may assume that this brief affidavit may be read into the record. Exhibit 602 was also read into the record.

THEPRESIDENT: Haven't you read it? Read it into the record, then if you say it is short.

DR. SEIDL: "In the second half of September, 1944, Governor Dr. von Burgsdorff reported to me that the Prior of the Karmeliter Monastery Czerna had lost his life and that there was a suspicion of punishable action. I immediately ordered that an investigation be made and ordered the case to be prosecuted. In the course of this investigation procedure, the Commander of the Security Police in theGovernment General made a report on the 25th of September, 1944, which has now been submitted by the prosecution under the number D-970, GB 602. This report was also the subject of a discussion which I had with the State Secretary Dr. Buehler and Keppe, on the 26th of September, 1944, and also with higher officers, during the course of which I ordered State Prosecutor Roter to make a detailed investigation of the case

"Further investigations have shown that the SA men mentioned in the report of the 25th of September, 1944, GB 602, did not belong to an SA unit of the Government General. As is already shown from the report of the 25th ofSeptember, 1944, the Monastery Czerna, although still within the boundaries of the Government General, was subordinated on the basis of a Fuehrer decree

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of the summer of 1944 with regard to customs, police, and military administration, to the neighboring province of Upper Silesia, which was in the Reich. The order of the Fuehrer had to be given in connection with the fortification work to be carried through in the East at that time. It can be thereby explained, as is shown from Document CB-602, that the investigation of the State Police Office of Kattowitz has actually been carried thr by a statepolice office, which is situated in the Reich territory. Ilkenau was not situated in the Government General, but inthe Reich (Upper Silesia). In these details not only SA men, but also members of other organizations, such as members of the Volkssturmmaenner were used.

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On the basis of the investigations of Prosecutor Roter penal proceedings were instituted against several SA men in Kattowitz. It was later reported to me that these proceedings had ended in sentencing of several of the accused, with severe penalties. (Signed) Dr. Frank."

THE PRESIDENT: No, Dr. Boehm, do you want to re-examine?

DR. BOEHM: I do Not want to ask any further questions.

DR. SEIDL: I would like to call the attention of the Tribunal to a document, also inthe name of the defendant Frank, a document which was submitted today, GB-615, Document D-923. In the report of the defendant Frank of 6 September 1933 it is shown under #3 that the defendant demanded strict prosecution of the accused SA Fuehrers.

THE PRESIDENT: The Tribunal has noticed that document and it does not require having its attention called to it by counsel for the defendant Frank. Have you any other documents?

DR. SEIDL: For the defendant Rudolph Hess I should like to make application that the Prosecution be requested that the answer of the Deputy of the Fuehrer to Document 784-PS also be submitted. This is a letter of Reich Minister of Justice to the Deputy of the Fuehrer of the 5th of June 1935. From the documents which were given to me it is now shown what occurred between this letter and the later decision of Hitler in this case. In particular the attitude which Hess took is not shown.

THE PRESIDENT: Have you not got the document you mean? You are referring to 784-PS and you are asking us to take notice of some other document. Have you got the document?

DR. SEIDL: No, I do not have it, but I should like to ask the Court that the Prosecution be requested to submit the answer to this document, the answer which the defendant Hess gave, that it be given to me.

THE PRESIDENT: The Tribunal will request the Prosecution to produce the document if they have got it.

LT. COLONEL GRIFFITH-JONES: It will be done. I cannot say at the moment whether the document is in our possession. If it is, it will be done.

THE PRESIDENT: Very well. Now, Dr. Boehm, do you want to ask any questions; Do you think that you will be able to finish by 1:00 o'clock?

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DR. BOEHM: That is impossible, Mr. President.

THE PRESIDENT: Well, will you be able o finish shortly afterwards?

DR. BOEHM: No. I believe that this re-examination which must take place after this cross-examination may last three hours. A number of new documents have to be taken up.

THE PRESIDENT: Very well,. We hope they will be relevant.

RE-DIRECT EXAMINATION

BY DR. BOEHM:

Q Witness, the first question which the prosecutor asked yesterday was

THE PRESIDENT: Dr. Boehm, the Tribunal thinks that three hours is not a reasonable time for re-examination. You will remember that re-examination should not be put in the form ofleading questions; that is one rule, and another rule is that it must arise out of the cross-examination and not be for the purpose of introducing fresh evidence which has not been dealt with by cross-examination. You will be kept strictly to those rules.

DR. BOEHM: I believe that today and yesterday the cross-examination dealt with a number of new matters, especially with the matters which were...

THE PRESIDENT: We don't want any arguments from you, Dr. Boehm. I am telling you what the Tribunal rules. If your questions arise out of the cross examination they are admissible. If they do not arise out of the cross-examination they are inadmissible. How will you go on with your re-examinat please?

BY DR. BOEHM:

Q Witness, the first question which was asked of you yesterday by the prosecutor was whether, and I assume that you personally as SA Fuehrer and SA Leadership were meant in this case, whether you dealt with the treatment of people outside of the borders of the Reich.

A No. The SA Leadership did not deal with the treatment of such people unless Germans were employed outside the Reich Borders who belonged to the SA.

Q A confidential report of the Supreme SA Leadership in the form of a report on the activities of the SA in the war was submitted yesterday. In connection with this report the prosecution asserted that its contents referred to the last week before the 23rd of June 1941; that is the day whe

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this report was issued. Now I should like to ask you whether it is true that the beginning of this report, under #1, on the 1st page: "The whole work of the SA from the beginning of the war" and on page 2 the last four lines, I quote: "Decorations.....

THE PRESIDENT: Did you give us the reference to this document?

DR. BOEHM: The first document which was submitted yesterday, 4011-PS on page 1 the first line and on page 2 the last four lines. May I continue?

THE PRESIDENT: Certainly. I only wanted the reference to the document. Go on.

BY DR. BOEHM:

Q "Decorations given to the SA: 21 Knight's Crosses of the Iron Cross, and 31,125 Iron Crosses, first and second class." Is it true if I say that this shows that the assertion of the prosecution that the report was only a report of the weeks before the 23rd of June 1941, that this assertion is incorrect: Is that true?

A Yes.

Q Is it true if I conclude from this thatthe third report on the activity of the SA during the war is a report beginning with the activity of the SA on the 1st of September 1939?

A These reports were always comprehensive reports. The third report, I believe I signed it myself, sums up the activity of the SA from the beginning of the war until the day of the report.

Q The prosecution said yesterday that the activity of the SA in the Hinterland was the activity of the SA in occupied territories. Mr. Huettner, if you will look at page 4 of this report that in the flood on the elbe, in the spring of 1941, for example, there were SA engineer units who were the first to arrive to give assistance and who, by means of their amphibious equipment, saved humans and animals from drowning, can one assume from this statement that what is called "Hinterland" was within the borders of the Reich?

A That meant the Homeland.

Q And then please look at page 5 of the same report. Do you haveit?

A I had it yesterday.

Q Well then, I will read it to you. On page 5 of the same report, I

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quote: "The DAF was given many SA Fuehrers and Unterfuehrers for duty in the Todt organization. The SA also fulfills extensive authoritative requirements, for example in the frontier control service." Does this not show clearly that the SA was eliminated from the authority of the SA Supreme Leadership and, like other drafted German citizens, was assigned to other authorities for a certain task?

A In all these services we released the men from the SA. We didnot offer them. We released them. The agencies in question, the Organization Todt, and other authorities took such men in.

THE PRESIDENT: That has been said already, hasn't it? He said already in cross-examination that these men, insofar as they were employed outside the Reich, were not operating as SA men in the SA units.

THE WITNESS: Within the Reich it was also true.

DR. BOEHM: What I asked had to precede the question which follows now or which was to follow. I should like to ask you, Mr. Huettner, were not the same conditions in existence in your report on the 21 groups of SA men who were assigned to guard prisoners?

THE PRESIDENT: That again, Dr. Boehm, he has already said. He said that all activities referred to in this report, insofar as they are concerned with the SA man, were not under SA men or SA units.

DR. BOEHM: Very well.

THE PRESIDENT: We will adjourn now.

(The Tribunal adjourned until 1000 hours, 16 August 1946.)